

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

METAMORPHOSIS CONSULTING, LLC, §
D/B/A FREEDOM PRACTICE §
COACHING, §
Plaintiff, §
vs. §
DAVID HELFAND, §
Defendant. §

CIVIL ACTION NO. 5:19-cv-172

DEFENDANT DAVID HELFAND'S NOTICE OF REMOVAL

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C §§ 1441 and 1446, David Helfand, defendant in Cause No. 2019-CI-01423, pending in the 224th Judicial District Court of Bexar County, Texas, files this notice of removal from that court to the United States District Court for the Western District of Texas, San Antonio Division, on the basis of diversity of citizenship and amount in controversy and respectfully shows:

I.

FACTUAL BACKGROUND

1.1 On January 23, 2019, plaintiff filed his original petition in the matter styled *Metamorphosis Consulting, LLC, D/B/A Freedom Practice Coaching vs. David Helfand*, Cause No. 2019-CI-01423, pending in the 224th Judicial District Court of Bexar County, Texas, in which plaintiff made a claim for damages.

1.2 David Helfand received a copy of plaintiff's petition on January 23, 2019. Chris Moore, who identified himself as a lawyer for the plaintiff, emailed the petition to Helfand. Service was not accomplished until February 20, 2019.

1.3 Attached hereto as Exhibit A is an Index of State Court Documents that identifies each document and indicates the date the document was filed in state court. Attached as Exhibit B is a copy of the docket sheet, and all documents filed in the state court action are attached as Exhibits B-1 through Exhibit B-3 as identified in the Index of Documents.

II.

BASIS FOR REMOVAL

2.1 Defendant files this notice of removal within 30 days of receiving plaintiff's petition.

See 28 U.S.C. §1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *See id.*

2.2. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. The Parties are of Diverse Citizenship

2.3 Plaintiff is and was at the time the lawsuit was filed a Texas limited liability company and therefore a citizen of Texas. *See* Plaintiff's Original Petition, ¶ 1.

2.4 Defendant was, and at the date of this notice, remains, a resident and citizen of the State of Massachusetts.

2.5 This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiff alleges that defendant is liable on a sworn account and that the "principal balance due on the account is \$82,998.00." *See* Plaintiff's Original Petition, ¶ 24. The affidavit of Weston Irey is attached to plaintiff's petition as Exhibit B. In it, Mr. Irey testifies that the "principal balance of eighty two thousand nine hundred and ninety eight dollars and no cents (\$82,998.00) is due on the account." *Id.*

2.6 Although several sentences in plaintiff's petition allege that plaintiff seeks "monetary relief of \$75,000.00" or less in damages, those allegations conflict with the other demands and allegations set forth above and do not eliminate damages over \$75,000.00 from the controversy in this case. Plaintiff's prayer for relief seeks damages of an unspecified sum, as well as "[a]ll other relief to which Plaintiff is entitled."

III.

REMOVAL IS PROCEDUREALLY CORRECT

3.1 This notice of removal is filed within the 30-day time period required by 28 U.S.C. § 1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division includes the county in which the state action has been pending and because a substantial part of the events giving rise to plaintiff's claims allegedly occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this notice.

3.4 Pursuant to 28 U.S.C. §1446(d), promptly after defendant files this notice, written notice of the filing will be given to plaintiff, the adverse party.

3.5 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this notice of removal will be filed with the Clerk of the Bexar County District Court, promptly after defendant files this notice.

IV.

CONCLUSION

4.1 Based upon the foregoing, the exhibits submitted in support of this removal and

other documents filed contemporaneously with this notice of removal and fully incorporated herein by reference, defendant hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Daniel W. Lanfear _____

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CERTIFICATE OF SERVICE

This is to certify that on February 22, 2019, a copy of this document was served to all Counsel of Record via electronic mail and/or certified mail, return receipt requested to:

Christopher A. Moore
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*Attorney for Plaintiff, Metamorphosis
Consulting, LLC*

s/ Daniel W. Lanfear _____

Daniel W. Lanfear